

1 JACK P. DICANIO (SBN 138782)
Jack.DiCanio@skadden.com
2 EMILY REITMEIER (SBN 305512)
Emily.Reitmeier@skadden.com
3 OSAMA ALKHAWAJA (SBN 334404)
Osama.Alkhawaja@skadden.com
4 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
5 525 University Avenue
Palo Alto, California 94301
Telephone: (650) 470-4500
Facsimile: (650) 470-4570

7 MATTHEW E. SLOAN (SBN 165165)
Matthew.Sloan@skadden.com
8 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue, Suite 3400
9 Los Angeles, California 90071-3144
Telephone: (213) 687-5000
10 Facsimile: (213) 687-5600

11 Attorneys for Defendant
FUJIAN JINHUA INTEGRATED CIRCUIT CO., LTD.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

16 UNITED STATES OF AMERICA,

CASE NO.: 3:18-cr-00465-MMC

17 Plaintiff,

**FUJIAN JINHUA INTEGRATED
CIRCUIT CO., LTD.'S NOTICE OF
MOTION AND MOTION IN LIMINE
NO. 3 TO EXCLUDE THE EXPERT
TESTIMONY OF TERENCE DALY;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
MATTHEW E. SLOAN; [PROPOSED
ORDER]**

18|| v.

19 UNITED MICROELECTRONICS CO. et al.,

Defendants.

Judge: The Honorable Maxine M. Chesney
Trial Date: February 14, 2022

Hearing Date: January 18, 2022
Hearing Time: 10:00 a.m.

1 **NOTICE OF MOTION AND MOTION**

2 TO THE CLERK OF THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF
3 RECORD:

4 PLEASE TAKE NOTICE that on January 18, 2022, at 10:00 a.m., or as soon thereafter as
5 the matter may be heard at a time set by The Honorable Maxine M. Chesney in Courtroom 7 of the
6 United States District Court for the Northern District of California, located at 450 Golden Gate
7 Avenue, San Francisco, California, defendant Fujian Jinhua Integrated Circuit Co., Ltd. (“Jinhua”),
8 will move the Court to exclude the United States’ purported “Foundry Expert” Terrence Daly from
9 offering improper opinion testimony with respect to his Principal Opinions No. 1, No. 4, and No. 5,
10 pursuant to Rules 401, 403, 702 and 704 of the Federal Rules of Evidence (“Motion”). This Motion
11 is based upon the Notice of Motion and Motion, Memorandum of Points and Authorities, the
12 Declaration of Matthew E. Sloan (“Sloan Decl.”) and exhibits thereto, the pleadings and papers on
13 file in this action, and such further arguments and matters as may be presented at the time of the
14 hearing on this Motion.

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ISSUES TO BE DECIDED

Jinhua seeks an Order from the Court precluding the government’s “Foundry Expert,” Terrence Daly, from offering certain opinions at trial, namely his opinions that “modern logic foundries” like “UMC do not make stand-alone DRAM products”; “Project M injured Micron”; and “Project M benefited JHICC and the People’s Republic of China.” As set forth below, these opinions should be excluded pursuant to Rules 401, 402, 403, 702 and 704 of the Federal Rules of Evidence.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Jinhua brings this Motion to exclude certain opinion testimony proffered by the government’s purported foundry expert, Terrence Daly. In his expert report, Mr. Daly expresses five principal opinions: (1) “modern logic foundries” like “UMC do not make stand-alone DRAM products”; (2) for a foundry to independently “develop stand-alone DRAM, the required resources – in money, engineers, and time – vastly exceed those committed by UMC and Fujian Jinhua Integrated Circuit Co., Ltd. (JHICC) in those companies’ joint technology development program, Project M”; (3) “although the resources committed to Project M were not sufficient independently to develop DRAM technology, they were consistent with the adoption of DRAM technology from a third party”; (4) “Project M injured Micron”; and (5) “Project M benefited JHICC and the People’s Republic of China.” See Report of Terrence Daly (“Daly Report”), Sloan Decl., Ex. A, at 2.

Jinhua respectfully moves the court for an order precluding Mr. Daly from offering testimony relating to opinions Nos. 1, 4, and 5, above, on the following grounds. *First*, Mr. Daly’s opinion that “modern logic foundries” like “UMC do not make stand-alone DRAM products” (opinion No. 1) should be excluded pursuant to Rule 401 because whether UMC could make stand-alone DRAM products is not relevant to any facts at issue in the case, and does not establish any elements of the offenses charged against Jinhua, or provide any other probative information. Moreover, this opinion is not based on reliable principles and methods, and is therefore inadmissible under Rule 702.

26 Second, Mr. Daly's opinions that "Project M injured Micron," and "Project M benefited
27 JHICC and the People's Republic of China" (opinions Nos. 4 and 5, above), should be excluded

1 because they are not directly relevant to establishing the elements of the offenses charged against
 2 Jinhua. Furthermore, this testimony is transparently designed to appeal to the potential biases of the
 3 jury by suggesting that Jinhua's actions will harm American competitors – like the complainant here,
 4 Micron Technology, Inc. ("Micron") – and that Jinhua is part of an improper scheme by the Chinese
 5 government to steal American trade secrets and drive U.S. DRAM companies out of business. This
 6 is precisely the type of unfairly prejudicial evidence that Rule 403 of the Federal Rules of Evidence
 7 is designed to exclude, because it seeks to encourage the jury to reach a verdict based on improper
 8 biases and concerns, as well as generalized facts about the alleged behavior of others, rather than on
 9 the basis of evidence related to the specific conduct of Jinhua. Mr. Daly's testimony should be thus
 10 excluded because its probative value, if any, is substantially outweighed by the risk of unfair
 11 prejudice, pursuant to Rule 403.¹

12 **II. THE CHARGES AGAINST JINHUA AND ELEMENTS OF THE ALLEGED**
OFFENSES

14 The Indictment charges Jinhua with three offenses. Count One alleges that Jinhua conspired
 15 with United Microelectronics Corporation ("UMC") and the individual defendant to commit
 16 economic espionage in violation of 18 U.S.C. § 1831(a)(5). (ECF 1 at 8-13). Count Two alleges
 17 that Jinhua conspired with the same defendants to commit theft of trade secrets in violation of 18
 18 U.S.C. § 1832(a)(5). (*Id.* at 14). And Count Seven alleges that Jinhua and the other defendants
 19 knowingly received and possessed stolen Micron trade secrets in violation of 18 U.S.C. § 1831(a)(3).
 20 (*Id.* at 16).

21 **III. ARGUMENT**

22 **A. Applicable Legal Standards**

23 Under Federal Rule of Evidence 702, an expert witness may testify if:

24 (a) the expert's scientific, technical, or other specialized knowledge
 25 will help the trier of fact to understand the evidence or to determine a
 26 fact in issue; (b) the testimony is based on sufficient facts or data; (c)

27 ¹ Jinhua reserves the right to object to any other areas of testimony that the government
 28 may seek to elicit from Mr. Daly during trial in the event this motion is not granted. As used in
 this Motion, "Rule" refers to the Federal Rules of Evidence.

1 the testimony is the product of reliable principles and methods; and
 2 (d) the expert has reliably applied the principles and methods to the
 facts of the case.

3 Fed. R. Evid. 702(a)-(d).

4 It is well-established that a court has a “gatekeeping function” to determine if expert
 5 testimony is both relevant and reliable, including excluding expert testimony that fails to meet those
 6 standards. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141, 147 (1999); *Daubert v. Merrell*
 7 *Dow Pharms., Inc.*, 509 U.S. 579, 589, 597 & n.7 (1993).

8 Rule 401 provides that evidence is relevant if “(a) it has any tendency to make a fact more or
 9 less probable than it would be without the evidence; and (b) the fact is of consequence in determining
 10 the action.” The court may exclude even relevant evidence, however, “if its probative value is
 11 substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing
 12 the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative
 13 evidence.” Fed. R. Evid. 403; *see also Jinro Am. Inc. v. Secure Invs., Inc.*, 266 F.3d 993, 1006 (9th
 14 Cir. 2001).

15 B. **Mr. Daly’s Proffered Testimony That UMC Is Not Capable of Producing DRAM**
 16 **(Opinion No. 1) Is Not Relevant and Is Not Based on Facts or Reliable Principles**
and Methods

17 Mr. Daly’s report indicates that, pursuant to opinion No. 1, he is prepared to testify “about
 18 the structure, value chain, and relationships among players in the semiconductor industry in general
 19 and the role, capabilities, and services of logic foundries such as GLOBALFOUNDRIES and UMC
 20 in particular.” (Sloan Decl. Ex. A at 2.) In addition, Mr. Daly indicates that he will testify that
 21 foundries typically “do not design products,” but instead “provide contract manufacturing services
 22 for products designed by several other companies.” (*Id.* at 3.) Mr. Daly states that he will also
 23 “discuss modern foundries as dating from around the time of GLOBALFOUNDRIES’ creation in
 24 2010.” (*Id.*)

25 Mr. Daly’s opinion that “modern logic foundries” like “UMC do not make stand-alone
 26 DRAM products” should be excluded under Federal Rules of Evidence 401 and 702 because it is
 27 irrelevant and will not meaningfully assist the jury or finder of fact.

1 Here, none of Dr. Daly's testimony regarding opinion No. 1 is related to the elements the
 2 government must prove at trial. *See* Section II, *supra*. This opinion is focused on the history of
 3 DRAM manufacturers, rather than on Jinhua's specific conduct. For example, a significant portion
 4 of Mr. Daly's opinion No. 1 is dedicated to the general difference between foundries and DRAM
 5 manufactures, rather than focusing on the capabilities of UMC in particular. (Sloan Decl. Ex. A at
 6 3.) These broad sweeping conclusions are not relevant to whether Jinhua conspired to misappropriate
 7 Micron's trade secrets and knowingly obtain or possess such trade secrets. Thus, this testimony is
 8 irrelevant and should be excluded pursuant to Rules 401 and 702.

9 In *United States v. Pangang Group Co.*, 879 F. Supp. 2d 1052 (N.D. Cal. 2012), this Court
 10 held that similar opinions "about the structure of corporations in the PRC, in general, which are not
 11 directed to the . . . Defendants specifically" were irrelevant and sustained defendant's objection to
 12 these opinions. *Id.* at 1057. Similar to the charges against Jinhua here, the government in that case
 13 alleged that the defendant Pangang Group, a Chinese state-owned enterprise, conspired to commit
 14 economic espionage and theft of trade secrets, as well as attempted to commit economic espionage.
 15 *Id.* at 1056. The defendants objected to an expert declaration submitted by the government in
 16 opposition to defendant's motion to quash for improper service. This declaration set forth general
 17 opinions about Chinese corporate structure in an attempt to show why service on a related entity in
 18 the U.S. was sufficient. *Id.* at 1057. Defendant objected to this declaration as irrelevant, and this
 19 Court agreed, finding that because the testimony was not specific to the Pangang Group, the
 20 testimony was irrelevant under Federal Rule of Evidence 401. *Id.* Similarly, here, Mr. Daly's
 21 generalized statements about the state of the DRAM manufacturing industry are inadmissible under
 22 Rule 401.

23 Mr. Daly's sweeping opinions about the limitations of modern logic foundries should also be
 24 excluded because they are not based on any reliable facts, principles or methodologies. Rule 702
 25 provides that an expert may "testify in the form of an opinion" if "(b) the testimony is based on
 26 sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d)
 27 the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid.

1 702. Here, Mr. Daly is drawing broad conclusions based on the structure of the industry without
 2 relating his conclusions to the underlying facts of the case. He contends that UMC is not capable of
 3 designing a DRAM chip because it historically operated as a foundry. (Sloan Decl. Ex. A at 3-4.)
 4 This position assumes a static, unchanging nature to an industry without providing a basis for this
 5 assumption. Instead of referencing the internal UMC documents produced during discovery that
 6 have been made available to Mr. Daly (*id.* at 1), he bases his conclusions on conjecture and past
 7 behavior. His opinion lacks any consistent and tested methodology to reach his conclusions.
 8 Therefore, opinion No. 1 is inadmissible under Rule 702. *See Gen. Elec. Co. v. Joiner*, 522 U.S.
 9 136, 146 (1997) (“[N]othing in either Daubert or the Federal Rules of Evidence requires a district
 10 court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.
 11 A court may conclude that there is simply too great an analytical gap between the data and the opinion
 12 proffered.”); *Claar v. Burlington N. R.R. Co.*, 29 F.3d 499, 501 (9th Cir. 1994) (affirming the
 13 exclusion of expert testimony pursuant to Rule 702 due to the lack of reliability in the methods and
 14 reasoning underlying the expert’s conclusions).

15 C. **Mr. Daly’s Proffered Testimony That Project M Injured Micron (Opinion No.**
 16 **4) Should Be Excluded Because It Is Not Relevant and Would Be Unfairly**
 17 **Prejudicial**

18 Mr. Daly’s expert disclosure indicates that he plans to testify that “Project M injured Micron
 19 in two ways.” (Sloan Decl. Ex. A at 9.) First, by allegedly stripping Micron of control over its trade
 20 secrets and second, by causing Micron to lose “market share, sales, revenue, and profits.” (*Id.*)

21 1. Whether “Project M Injured Micron” is not relevant to the case or any of the
 22 claims against Jinhua

23 The Indictment charges Jinhua with three offenses. *See supra* Section II. None of the charges
 24 require proving that Project M actually injured Micron, however. Rather, Jinhua’s subjective state
 25 of mind is what matters. In order to prove that Jinhua conspired to commit trade secrets theft (Count
 26 Two), the government must prove only that Jinhua reached an agreement with UMC and the
 27 individual defendants with the objective of misappropriating or wrongfully obtaining Micron’s
 28 purported trade secrets and that it “*knew*” or “*intended*” that its alleged theft of Micron’s purported

¹ trade secrets would injure any owner of that trade secret. Ninth Circuit Criminal Jury Instructions No. 8.141B (Theft of Trade Secrets).²

3 Notably, however, the Ninth Circuit has held that “18 U.S.C. § 1832 does not require proof
4 of actual injury; it requires knowledge that a theft ‘will’ injure.” *United States v. Zhang*, 590 F.
5 App’x 663, 666 (9th Cir. 2014); *see also United States v. Yihao Pu*, 814 F.3d 818, 828 (7th Cir. 2016)
6 (“The statute of conviction, 18 U.S.C. § 1832, does not explicitly require an economic loss to the
7 victim.”). Thus, the key element that the government must prove is that Jinhua and its decision
8 makers *intended* to harm Micron or *knew* that its actions would harm Micron. It does not have to
9 introduce any evidence that Project M actually harmed Micron. *Id.* Mr. Daly’s proposed testimony
10 on the potential harm that Jinhua’s conduct would have on Micron is thus irrelevant, and should be
11 excluded pursuant to Rules 401 and 702 because it will not assist the trier of fact to determine whether
12 the government has met its burden.

To meet that burden, the government must present percipient witness testimony about Jinhua’s purported intent and/or knowledge. *See Turf Ctr., Inc. v. United States*, 325 F.2d 793, 797 n.5 (9th Cir. 1963) (“In determining the issue as to intent the jury is entitled to consider any statements made and acts done or omitted by the defendant . . .”); *see, e.g., United States v. Ayers*, 924 F.2d 1468, 1473-74 (9th Cir. 1991) (collecting examples of witness testimonies introduced to prove intent). Here, instead of calling witnesses to testify about specific facts and acts related to Jinhua’s intent or knowledge, or introducing documents demonstrating the same, the government seeks to introduce non-party testimony by Mr. Daly in an attempt to usurp the jury’s role in applying

²² In order to prove that Jinhua conspired to commit economic espionage, as alleged in Count One, or committed a substantive charge of economic espionage, as alleged in Count Seven, the government must prove, among other things, that Jinhua (1) conspired to commit or knowingly took actions that it intended to or knew would benefit a “foreign government” or “foreign instrumentality”; and (2) knowingly received, bought, or possessed a trade secret, knowing the same to have been stolen or obtained by fraud or artifice. *See Ninth Circuit Model Criminal Jury Instructions, Instruction 8.141A (Economic Espionage); 18 U.S.C. § 1831.* In order to prove that Jinhua committed a theft of a trade secret, the government must prove, among other things, that Jinhua (1) intended to convert a trade secret to the economic benefit of someone other than the owner of that trade secret; and (2) knew that the offense would injure any owners of the trade secret. *See Ninth Circuit Model Criminal Jury Instructions, Instruction 8.141B (Theft of Trade Secret); 18 U.S.C. § 1832.*

the facts to the law and reaching the ultimate determination of whether Jinhua had the necessary knowledge or intent. This is clearly barred by Rule 704 which states that “an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.” Fed. R. Evid. 704(b).

2. Testimony Related to “Whether Project M Injured Micron” Is Unduly Prejudicial and Any Marginal Relevance Would Be Substantially Outweighed by This Unfair Prejudice

Even if Mr. Daly’s opinion No. 4 were relevant, any minimal probative value his proffered testimony would have would be substantially outweighed by the danger of unfair prejudice and should therefore be excluded pursuant to Rule 403. Mr. Daly’s opinion that “Project M injured Micron” is transparently designed to appeal to the potential biases of the jury by suggesting that Jinhua’s actions will harm American competitors – like Micron – and that China is an unfair competitor. This is precisely the type of unfairly prejudicial evidence that Rule 403 is designed to exclude because it seeks to encourage the jury to reach a verdict based on improper biases and concerns, as well as generalized facts about the alleged behavior of others, rather than on the basis of evidence related to the specific conduct of Jinhua. As such, Daly’s Principal Opinion No. 4, about the alleged harm to Micron, should be excluded pursuant to Rule 403.

D. Mr. Daly's Proffered Testimony That Project M Benefited the People's Republic of China (Opinion No. 5) Should Be Excluded Because It Is Not Relevant and Would Be Unduly Prejudicial

20 Mr. Daly’s expert disclosure indicates that he is prepared to testify that “Project M helped
21 the PRC advance its four-decade-old strategic goal of establishing a domestic semiconductor
22 industry, by creating an industry competitive DRAM IDM.” (Sloan Decl. Ex. A at 11.) Mr. Daly
23 also indicates that he will testify that “Project M would further the PRC’s reputation in showing that
24 China was no longer simply an assembler of other countries’ technology” and that, “over a period of
25 four decades, the PRC has tried to develop an indigenous semiconductor manufacturing industry to
26 reduce its dependence on the global supply chain, reduce chip imports, capture more of the value

1 chain and the associated revenue and profit, and increase jobs and technical skills in mainland
 2 China.” (*Id.*)

3 1. Mr. Daly’s Opinions About the Purported Benefit That Project M Would
Have on China’s Industrial Policy Is Not Relevant to Whether Jinhua Knew
or Intended That Project M Would Benefit the PRC or a Foreign
Instrumentality

6 While the government must prove beyond a reasonable doubt that Jinhua conspired to benefit
 7 a “foreign instrumentality” or “intended” or “knew” that its alleged receipt of Micron’s purported
 8 trade secrets “would benefit any foreign government” or “foreign instrumentality” in order to convict
 9 Jinhua of conspiracy to commit economic espionage or a substantive count of economic espionage,
 10 Mr. Daly’s proposed testimony here as to how Project M would benefit the People’s Republic of
 11 China will not “help the trier of fact understand the evidence or . . . determine a fact in issue” as
 12 required to satisfy Fed. R. Evid. 701(a). That is because the key issue here is whether the government
 13 can prove that Jinhua subjectively *intended* or *knew* that its conduct would benefit the Chinese
 14 government or reached an agreement with that intent and knowledge. Mr. Daly’s long-winded
 15 opinions on Chinese industrial policy and the money it has spent on developing its domestic
 16 semiconductor industry are irrelevant to those determinations. As with opinion No. 4, discussed
 17 above, in order to prevail the government must present percipient testimony or documentary evidence
 18 demonstrating that Jinhua “intended” or “knew” that its actions would benefit a foreign
 19 instrumentality or government. *See Ninth Circuit Model Criminal Jury Instructions, Instruction*
 20 8.141A (Economic Espionage); 18 U.S.C. § 1831(a) (providing that government must prove that the
 21 defendant *intended* or *knew* “that the offense will benefit any foreign government, foreign
 22 instrumentality, or foreign agent”). The government cannot fill that void through Mr. Daly’s expert
 23 opinion. *See* Fed. R. Evid. 704(b) (“[A]n expert witness must not state an opinion about whether the
 24 defendant did or did not have a mental state or condition that constitutes an element of the crime
 25 charged or of a defense. Those matters are for the trier of fact alone.”).

26 Mr. Daly’s opinion that Project M would benefit Jinhua is similarly irrelevant. (Sloan Decl.
 27 Ex. A at 11). Mr. Daly is apparently suggesting that given the government’s contention that Jinhua
 28

1 is a “foreign instrumentality,” any benefit to Jinhua would necessarily benefit a “foreign
2 instrumentality” and thus the Chinese Government. As stated above, though, the key issue here is
3 whether the government can prove Jinhua’s knowledge and intent to benefit the Chinese government,
4 not whether Jinhua accomplished that task. Mr. Daly’s testimony does not help establish Jinhua’s
5 knowledge and intent in any way, however. Furthermore, while Jinhua would not contest that Project
6 M was intended to benefit Jinhua, for that evidence to be relevant, the government must at the very
7 least make a preliminary showing at trial that Jinhua was a foreign instrumentality.

2. Mr. Daly's Proffered Testimony Regarding the Benefits That Project M Would Have for The People's Republic Of China Would Be Unduly Prejudicial and Any Marginal Relevance of Such Testimony Would Be Substantially Outweighed by This Unfair Prejudice

Even if Mr. Daly’s testimony were marginally relevant, it would be unfairly prejudicial and therefore should be excluded under Rule 403’s balancing test. The Ninth Circuit has held that expert testimony “tinged with ethnic bias and stereotyping” is unfairly prejudicial and therefore should be “excluded under Rule 403’s balancing test.” *Jinro Am. Inc.*, 266 F.3d at 1006.

5 Here, Mr. Daly relies on such bias to form the basis of his opinions. Mr. Daly’s testimony is
6 unfairly prejudicial and likely to mislead the jury for several reasons, including because it improperly
7 (i) focuses on China’s economic policy rather than the conduct of Jinhua; and (ii) suggests that Jinhua
8 should be seen as part of the Chinese government’s overall economic plan to develop its own
9 semiconductor industry, reduce its dependence on foreign suppliers, and shed its reputation as an
0 assembler of other countries’ products. Perhaps most troublingly, Mr. Daly suggests that the Chinese
1 government has misrepresented the commercial uses of DRAM, and that Project M would provide a
2 domestic source of supply for China’s military applications “despite public representations to the
3 contrary.” (Sloan Decl. Ex. A at 11.)

Even if Mr. Daly’s broad statements on China’s motivations and policymaking were relevant, they should be excluded because the probative value of such testimony is substantially outweighed by the risk of unfair prejudice. *See* Fed. R. Evid. 403. Courts have held that “generalized opinions about Chinese culture and business practice [that] have no link to the parties involved in this case . . .

1 have a serious risk of prejudicing the jury.” *In re Heparin Prod. Liab. Litig.*, MDL No. 1953, 2011
 2 WL 1059660, at *11 (N.D. Ohio Mar. 21, 2011). “Courts repeatedly exclude this type of testimony
 3 because ‘the risk of racial or ethnic stereotyping is substantial, appealing to bias, guilt by association
 4 and even xenophobia.’” *Id.*; *see also Jinro Am. Inc.*, at 1008.

5 Mr. Daly’s suggestion that China – and by extension Jinhua – are misrepresenting the
 6 commercial uses of DRAM should also be precluded for its prejudicial effect on a jury. (Sloan Decl.
 7 Ex. A at 11.) This court has excluded such inflammatory aspersions in the past. *See United States*
 8 *v. Liew*, No. CR 11-00573-1 JSW, 2013 WL 6441259, at *2 (N.D. Cal. Dec. 9, 2013) (excluding
 9 opinion that “[n]ational industrial policy goals in China encourage intellectual property theft, and
 10 an extraordinary number of Chinese in business and government are engaged in this practice’ . . . on
 11 the basis that any probative value is substantially outweighed by the potential for prejudice and to
 12 confuse the issues” (first alteration in original) (citation omitted)). The Ninth Circuit’s decision in
 13 *Jinro* is directly on point. There, the Ninth Circuit found that:

14 Allowing an expert witness . . . to generalize that most Korean
 15 businesses are corrupt, are not to be trusted and will engage in
 16 complicated business transactions to evade Korean currency laws is
 17 tantamount to ethnic or cultural stereotyping, inviting the jury to
 18 assume the Korean litigant fits the stereotype. In stark terms, [the
 19 expert]’s syllogism reduced to this: (a) Korean businesses generally
 20 are corrupt; (b) Jinro is a Korean business; (c) therefore, Jinro is
 21 corrupt. Our caselaw, and that of other circuits, establishes that this
 22 is an impermissible syllogism.

23 *Jinro Am. Inc.*, 266 F.3d at 1007.

24 Mr. Daly appears to be attempting to establish a similar bias here: that (i) China’s history and
 25 strategic goal of establishing a domestic semiconductor industry is averse to US interests; and (ii)
 26 that China’s efforts to fund its commercial and possibly military enterprises is inherently harmful.
 27 To imply there is something improper about China’s industrial policy is unduly prejudicial and any
 28 even marginal assistance this could provide to the jury in understanding the evidence would be
 substantially outweighed by this unfair prejudice. Mr. Daly’s testimony related to opinion No. 5
 should therefore be excluded in its entirety.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should issue an Order precluding Mr. Daly from
3 testifying at trial or offering any testimony in support of Principal Opinions Nos. 1, 4 and 5 from his
4 July 2, 2021 expert disclosure.

5 DATED: December 1, 2021 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

6 By: _____ */s/Matthew E. Sloan*
7 JACK P. DICANIO
8 MATTHEW E. SLOAN
EMILY REITMEIER
OSAMA ALKHAWAJA

9 *Attorneys for Defendant*
10 FUJIAN JINHUA INTEGRATED CIRCUIT CO., LTD.
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